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8 Attorneys for Complainant
9

10 **BEFORE THE**
CALIFORNIA BOARD OF ACCOUNTANCY
11 **DEPARTMENT OF CONSUMER AFFAIRS**
12 **STATE OF CALIFORNIA**

13 In the Matter of the Accusation and Petition to
Revoke Probation Against:

14 **DAVID M. WININGS**
15 P.O. Box 10720
Palm Desert, CA 92255

16 Certified Public Accountant
17 Certificate No. 62403

18 and

19 **DAVID M. WININGS, CPA**
AN ACCOUNTANCY CORPORATION
20 44331 Monterey Avenue, Suite C
Palm Desert, CA 92260

21 Certified Public Accountancy
22 Corporation Certificate No. 5457

23 Respondents.
24

Case No. D1-2006-14

DEFAULT DECISION
AND ORDER

[Gov. Code, §11520]

25 **FINDINGS OF FACT**

26 1. On or about March 5, 2009, Complainant Patti Bowers, in her official
27 capacity as the Executive Officer of the California Board of Accountancy, Department of
28 Consumer Affairs, filed Accusation and Petition to Revoke Probation No. D1-2006-14 against

1 David M. Winings and David M. Winings, CPA, an Accountancy Corporation before the
2 California Board of Accountancy (Board).

3 2. On or about July 31, 1992, the Board issued Certified Public Accountant
4 Certificate Number 62403 to David M. Winings (Respondent). The license was in full force and
5 effect at all times relevant to the charges brought herein and will expire on August 31, 2009,
6 unless renewed.

7 3. On or about September 3, 2004, the Board issued Certified Public
8 Accountancy Corporation Certificate Number 5457 to David M. Winings, CPA, An Accountancy
9 Corporation (Corporate Respondent). The license was in full force and effect at all times
10 relevant to the charges brought herein and expired on September 30, 2008.

11 4. On or about March 12, 2009, Denise Hosman, an employee of the
12 Department of Justice, served by Certified and First Class Mail a copy of the Accusation and
13 Petition to Revoke Probation No. D1-2006-14, Statement to Respondent, Notice of Defense,
14 Request for Discovery, and Government Code sections 11507.5, 11507.6, and 11507.7 to
15 Respondent's address of record with the Board, which was and is: 73261 Highway 111, Suite 9
16 Palm Desert, CA 92260. A copy of the Accusation and Petition to Revoke Probation is attached
17 as Exhibit A, and is incorporated herein by reference.

18 5. Service of the Accusation and Petition to Revoke Probation was effective
19 as a matter of law under the provisions of Government Code section 11505, subdivision (c).

20 6. On or about March 16, 2009, the aforementioned documents were returned
21 by the U.S. Postal Service marked "Unable to forward."

22 7. Government Code section 11506 states, in pertinent part:

23 (c) The respondent shall be entitled to a hearing on the merits if the
24 respondent files a notice of defense, and the notice shall be deemed a specific
25 denial of all parts of the accusation not expressly admitted. Failure to file a notice
of defense shall constitute a waiver of respondent's right to a hearing, but the
agency in its discretion may nevertheless grant a hearing.

26 8. Respondent failed to file a Notice of Defense within 15 days after service
27 upon him of the Accusation and Petition to Revoke Probation, and therefore waived his right to a
28 hearing on the merits of Accusation and Petition to Revoke Probation No. D1-2006-14.

9. California Government Code section 11520 states, in pertinent part:

(a) If the respondent either fails to file a notice of defense or to appear at the hearing, the agency may take action based upon the respondent's express admissions or upon other evidence and affidavits may be used as evidence without any notice to respondent.

10. Pursuant to its authority under Government Code section 11520, the Board finds Respondent is in default. The Board will take action without further hearing and, based on the evidence on file herein, finds that the allegations in Accusation and Petition to Revoke Probation No. D1-2006-14 are true.

11. The total cost for investigation and enforcement in connection with the Accusation and Petition to Revoke Probation are \$12,055.92 as of March 19, 2009.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent David M. Winings and David M. Winings, CPA, an Accountancy Corporation, has subjected his Certified Public Accountant License No. 62403 and Certified Public Accountancy Corporation Certificate No. 5457 to discipline.

2. A copy of the Accusation and Petition to Revoke Probation is attached.

3. The agency has jurisdiction to adjudicate this case by default.

4. The California Board of Accountancy is authorized to revoke Respondent's

Certified Public Accountant License and Certified Public Accountancy Corporation Certificate
based upon the following violations alleged in the Accusation and Petition to Revoke Probation:

a. Respondent has subjected his Certified Public Accountant License and Certified Public Accountancy Corporation Certificate to disciplinary action for unprofessional conduct under Business and Professions Code (Code) sections 5100(a) and 490 in that he was convicted of a crime for stealing funds from two separate clients.

b. Respondent has subjected his Certified Public Accountant License and Certified Public Accountancy Corporation Certificate to disciplinary action for unprofessional conduct under Code section 5100(k) in that they stole funds from two separate clients.

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1 c. Respondent has subjected his Certified Public Accountant License and
2 Certified Public Accountancy Corporation Certificate to disciplinary action for unprofessional
3 conduct under Code section 5100(i) in that he engaged in acts of fiscal dishonesty when he stole
4 money from his clients' bank account.

5 d. Respondent has subjected his Certified Public Accountancy Corporation
6 Certificate to disciplinary action for unprofessional conduct under Code section 5100(j) in that an
7 employee of David M. Winings, CPA, An Accountancy Corporation provided a client with a
8 credit card statement that had been altered to not show fraudulent charges that had been made by
9 Respondent's employee.

10 e. Respondent has subjected Certified Public Accountant License and
11 Certified Public Accountancy Corporation Certificate to disciplinary action for unprofessional
12 conduct under Code section 5100(c) in that he engaged in acts of dishonesty when he stole client
13 funds.

14 f. Grounds exist for revoking Respondent's probation and reimposing the
15 order of revocation of Respondent's Certified Public Accountant License and Certified Public
16 Accountancy Corporation Certificate because Respondent violated the conditions of his
17 probation in that he failed to comply with Probation Condition 1 which required that he obey all
18 laws. Respondent failed to obey all laws when on October 1, 2008, Respondent was convicted of
19 various crimes for stealing money from his clients.

20 ORDER

21 IT IS SO ORDERED that Certified Public Accountant License No. 62403 and
22 Certified Public Accountancy Corporation Certificate No. 5457, heretofore issued to Respondent
23 David M. Winings and David M. Winings, CPA, an Accountancy Corporation, are revoked.

24 Pursuant to Government Code section 11520, subdivision (c), Respondent may
25 serve a written motion requesting that the Decision be vacated and stating the grounds relied on
26 within seven (7) days after service of the Decision on Respondent. The agency in its discretion

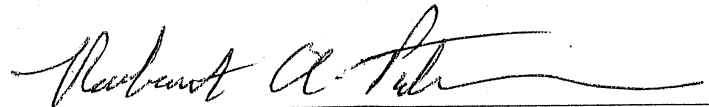
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1 may vacate the Decision and grant a hearing on a showing of good cause, as defined in the
2 statute.

3 This Decision shall become effective on June 25, 2009.

4 It is so ORDERED May 26, 2009

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6 FOR THE CALIFORNIA BOARD OF ACCOUNTANCY
7 DEPARTMENT OF CONSUMER AFFAIRS

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11 DOJ docket number:SD2008802627

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13 Attachment: Exhibit A: Accusation and Petition to Revoke Probation No. D1-2006-14
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Exhibit A

Accusation and Petition to Revoke Probation No. D1-2006-14

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of the State of California

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22 Respondents.
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Case No. D1-2006-14

**ACCUSATION AND PETITION TO
REVOKE PROBATION**

24 Complainant alleges:

25 **PARTIES**

26 1. Patti Bowers (Complainant) brings this Accusation solely in her official
27 capacity as the Executive Officer of the California Board of Accountancy, Department of
28 Consumer Affairs.

2. On or about July 31, 1992, the Board issued Certified Public Accountant Certificate Number 62403 to David M. Winings (Respondent). The license was in full force and effect at all times relevant to the charges brought herein and will expire on August 31, 2009, unless renewed.

3. On or about September 3, 2004, the Board issued Certified Public Accountancy Corporation Certificate Number 5457 to David M. Winings, CPA, An Accountancy Corporation (Corporate Respondent). The license was in full force and effect at all times relevant to the charges brought herein and expired on September 30, 2008.

4. In a disciplinary action entitled "In the Matter of Accusation Against David M. Winings and David M. Winings, CPA, An Accountancy Corporation," Case No. AC-2006-14, the Board issued a decision, effective August 25, 2006, in which Respondent's Certified Public Accountant License and Certified Public Accountancy Corporation Certificate were revoked. However, the revocations were stayed and Respondent's Certified Public Accountant License and Certified Public Accountancy Corporation Certificate were placed on probation for a period of three (3) years upon certain terms and conditions.

JURISDICTION

5. This Accusation is brought before the California Board of Accountancy (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

6. Section 490 of the Code states:

A board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

7. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a

1 person who holds a license, upon the ground that the applicant or the licensee has
2 been convicted of a crime substantially related to the qualifications, functions, and
3 duties of the licensee in question, the record of conviction of the crime shall be
4 conclusive evidence of the fact that the conviction occurred, but only of that fact,
5 and the board may inquire into the circumstances surrounding the commission of
6 the crime in order to fix the degree of discipline or to determine if the conviction
7 is substantially related to the qualifications, functions, and duties of the licensee in
8 question.

6 8. Section 5100 states:

7 After notice and hearing the board may revoke, suspend, or refuse to renew any
8 permit or certificate granted under Article 4 (commencing with Section 5070) and Article
9 5 (commencing with Section 5080), or may censure the holder of that permit or certificate
10 for unprofessional conduct that includes, but is not limited to, one or any combination of
11 the following causes:

10 (a) Conviction of any crime substantially related to the qualifications, functions
11 and duties of a certified public accountant or a public accountant.

12 . . .

12 (c) Dishonesty, fraud, gross negligence, or repeated negligent acts committed in
13 the same or different engagements, for the same or different clients, or any combination
14 of engagements or clients, each resulting in a violation of applicable professional
15 standards that indicate a lack of competency in the practice of public accountancy or in
16 the performance of the bookkeeping operations described in Section 5052.

16 . . .

16 (i) Fiscal dishonesty or breach of fiduciary responsibility of any kind.

17 (j) Knowing preparation, publication, or dissemination of false, fraudulent, or
18 materially misleading financial statements, reports, or information.

19 (k) Embezzlement, theft, misappropriation of funds or property, or obtaining
20 money, property, or other valuable consideration by fraudulent means or false pretenses.

21 9. Section 5106 states:

22 A plea or verdict of guilty or a conviction following a plea of nolo contendere is
23 deemed to be a conviction within the meaning of this article. The record of the
24 conviction shall be conclusive evidence thereof. The board may order the certificate or
25 permit suspended or revoked, or may decline to issue a certificate or permit, when the
26 time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or
27 when an order granting probation is made, suspending the imposition of sentence,
28 irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal
Code allowing such person to withdraw his plea of guilty and to enter a plea of not guilty,
or setting aside the verdict of guilty or dismissing the accusation, information or
indictment.

10. Section 5107, subdivision (a), states, in pertinent part:

The executive officer of the board may request the administrative law judge, as part of the proposed decision in a disciplinary proceeding, to direct any holder of a permit or certificate found to have committed a violation or violations of this chapter to pay to the board all reasonable costs of investigation and prosecution of the case, including, but not limited to, attorneys' fees.

11. Section 5109 of the Code states:

The expiration, cancellation, forfeiture, or suspension of a license, practice, privilege, or other authority to practice public accountancy by operation of law or by order or decision of the board or a court of law, or the voluntary surrender of a license by a licensee shall not deprive the board of jurisdiction to commence or proceed with any investigation of or action or disciplinary proceeding against the licensee, or to render a decision suspending or revoking the license.

12. California Code of Regulations (CCR), title 16, section 99 states:

For the purposes of denial, suspension, or revocation of a certificate or permit pursuant to Division 1.5 (commencing with section 475) of the Business and Professions Code, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a certified public accountant or public accountant if to a substantial degree it evidences present or potential unfitness of a certified public accountant or public accountant to perform the functions authorized by his or her certificate or permit in a manner consistent with the public health, safety, or welfare. Such crimes or acts shall include but not be limited to those involving the following:

(a) Dishonesty, fraud, or breach of fiduciary responsibility of any kind;

....

13. CCR section 99.1 states:

When considering the denial of a certificate or permit under Section 480 of the Business and Professions Code, the suspension or revocation of a certificate or permit or restoration of a revoked certificate under Section 11522 of the Government Code, the board, in evaluating the rehabilitation of the applicant and his present eligibility for a certificate or permit, will consider the following criteria:

(1) Nature and severity of the act(s) or offense(s).

(2) Criminal record and evidence of any act(s) committed subsequent to the act(s) or offense(s) under consideration which also could be considered as grounds for denial, suspension or revocation.

(3) The time that has elapsed since commission of the act(s) or offense(s) referred to in subdivision (1) or (2).

(4) The extent to which the applicant or licensee has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant or licensee.

1 (5) If applicable, evidence of expungement proceedings pursuant to
2 Section 1203.4 of the Penal Code.

3 (6) Evidence, if any, of rehabilitation submitted by the applicant or
4 licensee.

5 ACCUSATION

6 FIRST CAUSE FOR DISCIPLINE

7 (Conviction of a Crime Substantially Related to Accountancy Work)

8 14. Respondent has subjected his Certified Public Accountant License and
9 Certified Public Accountancy Corporation Certificate to disciplinary action for unprofessional
10 conduct under Code sections 5100(a) and 490 in that he was convicted of a crime. The
11 circumstances are as follows:

12 a. On October 1, 2008, Respondent pled guilty to violating two
13 counts of Penal Code section 368(d) (theft from elder adult); two counts of 530.5(a)
14 (personate to obtain credit), two counts of Penal Code section 487(a) (grand theft), and
15 one count of RT section 19706 (evading taxes), all felonies, in the criminal proceeding
16 entitled *People v. David Michael Winings*, in the Riverside County Superior Court, Case
17 Number 1NF062056#2. On November 12, 2008, Respondent was sentenced to 16 years
18 in prison; ordered to pay restitution in an amount to be determined and to pay a restitution
19 fine of \$2,800.

20 b. The circumstances of the crime are that Respondent and his
21 accountancy corporation stole funds from two separate clients as follows:

22 (1) Respondent and his accountancy corporation were hired to pay
23 client Ruth J.'s bills for her. Ruth J. was an elderly woman. During the period March 13,
24 2007 through March 24, 2008, Respondent's employee J.U., stole funds totaling
25 approximately \$78,037 from client Ruth J. Employee J.U. made unauthorized charges to
26 client Ruth J.'s visa card every two weeks under the name of "McLane Co. Cleaning" for
27 cleaning services that were not performed. Employee J.U. owns the company McLane
28 Co. Cleaning. Employee J. U. is Respondent's stepson. When client Ruth J. asked
employee J.U. for her last two months of credit card statements, employee J.U. provided

1 Ruth J. with fraudulent statements that did not contain the charges from McLane Co.
2 Cleaning.

3 (2) Respondent and his accountancy corporation were hired to manage
4 a payroll account for Ralph and Faye J. Respondent set up a client trust account for
5 Ralph and Faye J. so he could manage the payroll account. During the period January
6 2005 through April 2008, Respondent took approximately \$110,000 of funds from Ralph
7 and Faye J.'s account without their authorization.

8 SECOND CAUSE FOR DISCIPLINE

9 (Theft)

10 15. Respondent has subjected his Certified Public Accountant License and
11 Certified Public Accountancy Corporation Certificate to disciplinary action for unprofessional
12 conduct under Code section 5100(k) in that they stole funds from two separate clients. David M.
13 Winings, CPA, An Accountancy Corporation stole funds from client Ruth J. during the period of
14 March 13, 2007 through March 24, 2008. David M. Winings, CPA, An Accountancy
15 Corporation and David M. Winings, CPA stole funds totaling approximately \$110,000 from
16 clients Ralph J. and Faye J. during the period of January 2005 through April 2008. The
17 circumstances are set forth in paragraph 14 above, which is incorporated herein as though fully
18 set forth.

19 THIRD CAUSE FOR DISCIPLINE

20 (Fiscal Dishonesty)

21 16. Respondent has subjected his Certified Public Accountant License and
22 Certified Public Accountancy Corporation Certificate to disciplinary action for unprofessional
23 conduct under Code section 5100(i) in that he engaged in acts of fiscal dishonesty when he stole
24 money from clients Ralph and Faye J.'s bank account. The circumstances are set forth in
25 paragraph 14 above, which is incorporated herein as though fully set forth.

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1 FOURTH CAUSE FOR DISCIPLINE

2 (The Knowing Preparation of False Information)

3 17. Respondent has subjected his Certified Public Accountancy Corporation
4 Certificate to disciplinary action for unprofessional conduct under Code section 5100(j) in that an
5 employee of David M. Winings, CPA, An Accountancy Corporation provided a client with a
6 credit card statement that had been altered to not show fraudulent charges that had been made by
7 Respondent's employee. The circumstances are set forth in paragraph 14 above, which is
8 incorporated herein as though fully set forth.

9 FIFTH CAUSE FOR DISCIPLINE

10 (Dishonesty)

11 18. Respondent has subjected Certified Public Accountant License and
12 Certified Public Accountancy Corporation Certificate to disciplinary action for unprofessional
13 conduct under Code section 5100(c) in that he engaged in acts of dishonesty when he stole client
14 funds as set forth in paragraph 14 above, which is incorporated herein as though fully set forth.

15 JURISDICTION FOR THE PETITION TO REVOKE PROBATION

16 19. Grounds exist for revoking the probation and reimposing the order of
17 revocation of Certified Public Accountant License No. 62403 issued to Respondent David M.
18 Winings and Certified Public Accountancy Corporation Certificate No. 5457 issued to David M.
19 Winings, CPA an Accountancy Corporation. The Board's disciplinary order effective on August
20 25, 2006, contained Probation Condition 8, Violation of Probation, which provides as follows:

21 If Respondents violate probation in any respect, the Board, after giving
22 Respondents notice and an opportunity to be heard, may revoke probation and carry out
23 the disciplinary order that was stayed. If an accusation or a petition to revoke probation is
24 filed against Respondents during probation, the Board shall have continuing jurisdiction
25 until the matter is final, and the period of probation shall be extended until the matter is
26 final.

25 20. Respondent has violated the conditions of his probation as set forth in the
26 following paragraphs.

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4. Taking such other and further action as deemed necessary and proper.

DATED: MAY 5, 2009



PATTI BOWERS
Executive Officer
California Board of Accountancy
Department of Consumer Affairs
State of California
Complainant

03541 -SD2004800441
Winings Acc.wpd